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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,826	11/30/2001	Harry J. Chmielewski	53394.000442	2686
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HUNTON & WILLIAMS LLP INTELLECTUAL PROPERTY DEPARTMENT 1900 K STREET, N.W. SUITE 1200 WASHINGTON, DC 20006-1109			EXAMINER ANDERSON, CATHARINE L	
			ART UNIT 3761	PAPER NUMBER

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/996,826

Applicant(s)

CHMIELEWSKI, HARRY J.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 14 November 2005 have been fully considered but they are not persuasive.

In response to the applicant's argument that the superabsorbent of Qin is structurally different from the superabsorbent of the instant invention, it is noted that Qin discloses in column 8, lines 51-54, polyacrylate in particulate form having a particle size of 300-600 microns, which is within the range of particle size disclosed on page 11 of the instant specification.

In response to the applicant's argument that Qin does not mention the importance of the resistance to flow, it is noted that the Gel Integrity Index as described in the instant specification as dependent upon the absorbency and swelling properties of the polymer. The polymer disclosed by Qin meets the same absorbency requirements as the claimed invention, and Qin discloses in column 11, lines 6-24, the swelling properties of the polymer. Therefore, since Qin discloses the properties upon which the Gel Integrity Index is dependent, the polymer of Qin will inherently exhibit the claimed Gel Integrity Index.

In response to the applicant's argument that a wide disparity in physical properties between various polyacrylate superabsorbent polymers exists, it is noted that the applicant has still not shown that the polyacrylate superabsorbent polymer of Qin does not share the same physical properties as the claimed invention. The product

data sheets for various polyacrylates provided by the applicant do not disclose the Gel Integrity Index, Absorbance Under Load, or any other property disclosed in the instant claim. The product data sheets therefore do not show any evidence that the polymer of Qin fails to disclose the claimed Gel Integrity Index.

In response to the applicant's argument that the statement on page 8 of the instant specification that "Persons of ordinary skill in the art would be readily able to prepare and identify superabsorbent polymers meeting these characteristics, without undue experimentation, based upon the guidance provided herein," it is noted that without further guidance as to the superabsorbent of the instant invention, identification of superabsorbent polymers meeting these characteristics would require undue experimentation. Based on the guidance of the instant specification (i.e. the disclosure of the procedure for determination of the Gel Integrity Index), one skilled in the art could determine the Gel Integrity Index of a given superabsorbent. However, to determine which superabsorbent polymers have a GII of less than 500 kg mm, and which have a GII of greater than 500 kg mm, would require testing of all superabsorbent polymers presently known, which would not be a trivial task. Further, since guidance provided within the instant specification for identifying a superabsorbent polymer meeting the claimed characteristics is merely the method of determining the GII for any given superabsorbent polymer, the Examiner's argument that selection of a known element is considered obvious (see *In re Leshin*, 125 USPQ 410). The superabsorbent polymers that fulfill the claimed limitation are already known in the art, and one skilled in the art could determine the GII of these known polymers.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-12, 14-23, 26-39, and 42-85 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Qin et al. (6,469,130).

Qin discloses an absorbent web for use in absorbent articles, as described in column 3, lines 35-40, which are well-known to comprise a topsheet, backsheet, and absorbent core. The absorbent web comprises a superabsorbent polymer having an AUL value of less than about 25 g/g at 0.3 psi, as disclosed in column 18, lines 41-44. Qin remains silent as to the Gel Integrity Index of the superabsorbent polymer, but discloses a superabsorbent polymer disclosed in the instant specification as fulfilling the limitation claimed for the GII. The superabsorbent polymer of Qin therefore inherently fulfills the claimed limitation.

In the alternative, Qin discloses a desire for a superabsorbent polymer with superior absorbency. The instant specification states on page 11 that polymers having a GII exhibit superior absorbency, and further states that one of ordinary skill in the art would be readily able to prepare and identify superabsorbent polymers meeting the

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claimed characteristics. Therefore, since Qin provides the claimed absorption properties and chemical structure, it would be obvious to one of ordinary skill in the art at the time of invention to also provide the claimed Gel Integrity Index, since it has been held that where the general conditions of the claim are disclosed in the prior art, finding the optimum or workable ranges involves only routine skill in the art.

With respect to claims 2-5, 16, 29-32, 42-44, 52-54, and 62-65, the superabsorbent polymer is about 33% by weight, and wettable fibers comprise 67%, as disclosed in column 19, lines 11-13.

With respect to claims 6, 33, 45, 55, and 66, the superabsorbent polymer comprises a stabilizing agent, as disclosed in column 18, lines 29-31.

With respect to claims 7, 18, 27, 34, 46, and 56, the superabsorbent polymer is crosslinked, as disclosed in column 18, line 41.

With respect to claims 8, 19, 35, 47, and 57, the superabsorbent polymer is polyacrylate, as disclosed in column 18, line 29.

With respect to claims 9-12, 20-23, 36-39, 48-51, 58-61, 67-70, and 82-85, the superabsorbent polymer is disclosed in the instant specification as being suitable to fulfill the limitation of the GII, and therefore the superabsorbent polymer of Qin fulfills the claimed limitations.

With respect to claims 15 and 26, the absorbent article is a diaper, training pant, sanitary napkin, or hygienic garment, as disclosed in column 3, lines 35-40.

With respect to claim 17, the superabsorbent polymer is in particulate form, as disclosed in column 18, line 38.

With respect to claim 28, a diaper comprises front and rear waist portions, a waist opening, a crotch region, and leg openings.

With respect to claims 71-81, the absorbent article is prepared by combining the superabsorbent polymer and the wettable fibers, as disclosed in column 19, lines 7-63.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-14, 24-25, and 40-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Qin et al. (6,469,130) in view of Roberts et al. (3,875,942).

Qin discloses all aspects of the claimed invention with the exception of an additive. Roberts teaches the use of a medicament in the absorbent core of an absorbent article to maintain the wellness of the wearer's skin, as disclosed in column 1, lines 36-40. It would therefore be obvious to one of ordinary skill in the art at the time of invention to incorporate the medicament of Roberts into the absorbent article of Qin in order to maintain the wellness of the wearer's skin.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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cla

January 19, 2005

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Tatyana', written over the printed name and title.